

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY,**

Plaintiff

v.

**FREEHOLD MANAGEMENT, INC. AND
RETAIL PLAZAS, INC.,**

Defendants

v.

**FREEHOLD MANAGEMENT,
INC., RETAIL PLAZAS, INC., AND
RPI DENTON CENTER, LTD.**

CIVIL ACTION NO. 3:16-CV-02255-L

**STATE AUTOMOBILE MUTUAL INSURANCE COMPANY'S AMENDED MOTION
TO STRIKE AND/OR EXCLUDE THE EXPERT TESTIMONY OF MATT PHELPS,
ROCCO CALACI, ROGER GRIMM, GARY B. TREIDER, AND CAROLYN COLEMAN**

NOW COMES State Automobile Mutual Insurance Company (hereinafter "State Auto"), in its capacity as Plaintiff in the above numbered and titled cause, and files its Amended Motion to Strike and/or Exclude the Expert Testimony of Matt Phelps, Rocco Calaci, Roger Grimm, Gary B. Treider, and Carolyn Coleman ("Motion") (collectively "Defendants' experts").

As is more fully explained in the accompanying Second Amended Brief in Support of Plaintiff's Motion, the opinions and testimony of Defendants' experts should be struck for the reason that their opinions are not reliable or relevant as required by Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). Specifically, the experts' opinions were based on inaccurate information resulting in skewed results and were improperly applied to the facts of the instant case.

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GRIMM, GARY B. TREIDER, AND CAROLYN COLEMAN

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State Auto files this Amended Motion requesting that this Court strike the expert testimony and opinions rendered by Defendants' experts Matt Phelps, Rocco Calaci, Roger Grimm, Gary B. Treider, and Carolyn Coleman, and for any and all additional relief that State Auto may show itself justly entitled at law or in equity.

Respectfully submitted, this 30th day of August, 2018.

/s/Charles B. Mitchell, Jr.

CHARLES B. MITCHELL, JR.

State Bar No. 14207000

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MICHAEL SHANE O'DELL

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**ATTORNEY FOR PLAINTIFF,
STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY**

CERTIFICATE OF CONFERENCE

On August 6, 2018, counsel for Plaintiff conferred with Todd Lipscomb, counsel for Defendants, Freehold Management, Inc. and Retail Plazas, Inc., regarding the merits of this motion in an attempt to resolve the matters addressed in same and was advised that Defendants' counsel was opposed to this motion.

/s/ Charles B. Mitchell, Jr.

CHARLES B. MITCHELL, JR.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been served on the 30th day of August, 2018, as follows via E-mail and via the Court's ECF system, which sent notification to the following:

Via E-mail and Via E-Service

Robert W. Loree
Todd Lipscomb
Cassandra Pruski
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/s/Charles B. Mitchell, Jr.

Charles B. Mitchell, Jr.